

Appl. No. : 10/663,384
Filed : September 16, 2003

REMARKS

The October 3, 2006 Final Office Action was based on pending Claims 1–20. By this Response, Applicant is amending Claims 1, 9, 11, 12 and cancelling Claims 3, 4, 7, 8 and 16–18 without prejudice or disclaimer. Claims 2, 5, 6, 10, 13–15, 19 and 20 remain as originally filed or as previously presented, and new Claims 21–25 have been added.

Thus, after entry of the foregoing amendments, Claims 1, 2, 5, 6, 9–15 and 19–25 are pending and presented for further consideration. In view of the foregoing amendments and the remarks set forth below, Applicant submits that Claims 1, 2, 5, 6, 9–15 and 19–25 are in condition for allowance.

SUMMARY OF OBJECTIONS AND REJECTIONS

The Final Office Action rejected Claims 3, 4, 7 and 8 under 35 U.S.C. § 112, first paragraph, as failing to comply with the enablement requirement.

Claims 1–6, 8–12 and 20 were rejected under 35 U.S.C. § 102(b) as being unpatentable over U.S. Patent No. 6,154,852 to Amundson et al. ("Amundson").

In addition, Claim 7 was rejected under 35 U.S.C. § 103(a) as being unpatentable over Amundson in view of U.S. Patent Application Publication No. 2004-0210796 to Largman et al. ("Largman"). Claim 18 was rejected under 35 U.S.C. § 103(a) as being unpatentable over Amundson in view of U.S. Patent Application Publication No. 2006-0149889 to Sikha ("Sikha").

CLAIMS 13–17 AND 19

Applicant notes that the cover sheet of the October 3, 2006 Final Office Action indicates that Claims 1–20 were rejected. However, within the body of the Final Office Action there is no discussion of Claims 13–17 and 19.

As discussed above, Claims 16 and 17 have been cancelled without prejudice or disclaimer. Applicant further submits that Claims 13–15 and 19 are patentably distinguished over the cited art and respectfully requests allowance of Claims 13–15 and 19.

CLAIM REJECTIONS UNDER 35 U.S.C. § 112, FIRST PARAGRAPH

Claims 3, 4, 7 and 8 were rejected under 35 U.S.C. § 112, first paragraph, as failing to comply with the enablement requirement. As detailed in Applicant's previous response filed June 27, 2006, Applicant respectfully disagrees with this rejection. However, in an effort to expedite prosecution of the present application, Applicant has cancelled Claims 3, 4, 7 and 8 without prejudice or disclaimer.

CLAIM REJECTIONS UNDER 35 U.S.C. § 102(b)

The Final Office Action rejected Claims 1, 2, 5, 6 and 9–12 as being anticipated by Amundson. In view of the foregoing amendments and for at least the reasons set forth below, Applicant respectfully disagrees and requests reconsideration of Claims 1, 2, 5, 6 and 9–12.

Amended Independent Claim 1

Focusing on amended independent Claim 1, in one embodiment of Applicant's invention a method is disclosed for transferring data in a multi-tiered storage system. The method includes performing a plurality of primary copies of data stored in a data source, wherein the performing of at least one of the copies includes: (i) dividing the data source data into first and second portions, and (ii) transferring the first and second portions of data from the data source to first and second storage media using first and second data streams, respectively.

The method further includes: receiving user input regarding whether the first and second portions of data should be combined; determining if the first and second portions of data can be combined; and if the user input indicates that first and second portions of data should be combined, and if the first and second portions of data can be combined, transferring the first and second portions of data from the first and second storage media to a third storage medium using a third combined data stream.

Amundson does not disclose the method of amended independent Claim 1. Rather, the portions of Amundson cited by the Final Office Action appear to disclose backing up a single large data object (136) across multiple tape drives (118) in order to perform load balancing (see column 3, lines 35–38). When the backed-up data is to be

restored, a certain amount of the tapes drives (118) are selected to perform the recovery process to a direct access storage device (DASD) (116) (see column 12, lines 13–34). In certain circumstances, a unique token is associated with the object data to facilitate restoration of the object data (see, e.g., column 5, lines 25–32; column 6, lines 1–14).

Amundson does not appear to disclose, among other things, “performing a plurality of primary copies of data stored in a data source,” as recited in amended Claim 1 and Applicant’s specification (see, e.g., paragraph 33). Rather, Amundson appears to disclose load balancing single copies of data objects over a plurality of drives. Moreover, the Amundson system does not appear to (1) receive user input regarding whether or not first and second portions of data on different storage media should be combined into a data stream; and (ii) make a determination that the first and second portions of data can be combined. Rather, the Amundson system restores multiple pieces of a data object based on a unique identifier associated with the pieces.

Because Amundson does not disclose each element of amended independent Claim 1, Applicant asserts that Claim 1 is not anticipated by Amundson, and Applicant respectfully requests allowance of Claim 1.

Amended Independent Claims 9, 11 and 12

Amended independent Claims 9, 11 and 12 are believed to be patentably distinguished over Amundson for reasons similar to those set forth with respect to the patentability of amended independent Claim 1 and for the different aspects recited therein.

Dependent Claims 2, 5, 6 and 10

Claims 2, 5 and 6 depend from amended independent Claim 1 and are believed to be patentably distinguished over Amundson for the reasons set forth above with respect to Claim 1 and for the additional features recited therein.

Claim 10 depends from amended independent Claim 9 and is believed to be patentably distinguished over Amundson for the reasons set forth above with respect to Claim 9 and for the additional features recited therein.

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NEW CLAIMS 21-25

New Claims 21-25 have been added to more fully define Applicant's invention and are believed to be fully distinguished over the prior art of record.

CONCLUSION

In view of the foregoing, the present application is believed to be in condition for allowance, and such allowance is respectfully requested. If further issues remain, the Examiner is cordially invited to contact the undersigned such that the issues may be promptly resolved.

Moreover, by the foregoing amendments and remarks no admission is made that any of the above-cited references are properly combinable. Rather, Applicant submits that even if the references are combined, the references still do not teach or suggest the claimed invention.

Please charge any additional fees, including any fees for additional extension of time, or credit overpayment to Deposit Account No. 11-1410.

Respectfully submitted,

KNOBBE, MARTENS, OLSON & BEAR, LLP

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By: Christian A. Fox

Christian A. Fox
Registration No. 58,507
Attorney of Record
Customer No. 20,995
(949) 760-0404

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